

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Boggs Kurlander Steele, LLC)	
	Map 043-00-0, Parcel 6.00)	Davidson County
	Commercial Property)	
	Tax Year 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,700,000	\$4,361,500	\$7,061,500	\$2,396,770

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on September 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted in two parts because of time restraints, the first on March 17, 2007 at the State of Tennessee Division of Property Assessments, with the conclusion at the Davidson County Property Assessor's Office on May 8, 2007. Present at the hearing were Mr. Dennis Donovan and Dean Lewis from the Davidson County Assessor's Office, the taxpayer, John Boggs, who was represented by Attorney Barbara Perutelli, Kitty Alyea, Mobile Home Park Manager, Fred Hahn, Former State Appraiser and currently a Mobile Home Dealer and Booker, and Mark Watson, Real Estate Appraiser with Intega Realty, Inc.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a mobile home park commonly called Old Hickory Mobile Home Estates located at 500 Cheyenne Boulevard in Madison, Davidson County, Tennessee.

The taxpayer's attorney contends, through the testimony of Mark Watson, the certified general real estate appraiser, that the value is \$2,500,000 for the land and infrastructure and \$2,920,400 with the mobile homes. "As of the valuation date of January 1, 2006, the subject was an existing mobile home park containing 275 pad sites. The improvements were constructed in 1950, and were 86% leased as of the January 1, 2006 valuation date. The site was and remains 38.92 acres or 1,695,355 square feet. The subject appears to have no excess or surplus land. Based

on the RE 7.5 zoning at the subject as well as flood plain existing on a portion of the subject, approximately 220 residential units could be developed on the subject site as if vacant.”

Mr. Hahn, formerly of the Tennessee State Division of Property Assessments, now a mobile home dealer and broker, relates that in his opinion the value of the mobile home park is far less than the value set by the County. He states that in his opinion mobile homes are more like cars, they do not appreciate, they depreciate in value. Mr. Hahn also stated that the smaller (10 x 50's or 14 x 60's) homes are almost obsolete as home owners today want the larger more expansive models, which usually have more amenities. Mr. Hahn further stated that he actually went through the mobile home park and conducted a field review, he believes that 'economic obsolescence' plays a significant part in the valuation of the subject (Taxpayer's Exhibit #2)¹. He stated that “most parks would not allow (some of) these mobile homes in their parks because they are too old”, upon cross examination by Mr. Lewis about the NADA values (County's exhibit #10) of some of the homes, he stated that in his view the “high market of value is not very functional” for valuation purposes. Mr. Hahn says that he sells between 50 to 60 units a year and he believes he has a good grasp on the values. Mr. Hahn acknowledged that he is not licensed in the state of Tennessee and that the values he set are really his “estimates of value” based on his experience.

He stated that when he was quoting prices he was not aware that in Davidson County the cost of the mobile home includes the price of 'set up' , however; that based on his 30 years of experience in the business the cost of 'set up' is usually an additional \$1,500 so that amount should be deducted from the value.

Ms. Kitty Alyea testified that the price/rent for a single wide unit was \$233 monthly and \$243 for a double wide with no utilities². She also stated that of the original pads the use of some was lost when the Department of Codes Administration changed the requirements; some pads were no longer useable because they were too narrow or not able to have electricity. Some of the pads are reserved for 'RV' use, for example, in response to Mr. Lewis's question of why Mr. Watson's report shows 275 pads her testimony showed 303 useable pads. Ms. Alyea stated that she could only go by her rolls (TP's exhibit #1 & #9) which she testified to shows 247 pads as occupied; 14 vacant; 27 unusable; and 15 for RVs. Ms. Alyea also acknowledged that in exhibit #9 mobile home values were not disclosed because she “did not know what or how to fill it out”.

In coming to a determination of value the taxpayer relied on the analysis conducted by Mr. Watson taking into account the information of the other witnesses.

¹ Mr. Hahn did a random sampling of 17 of the 247 homes but did not produce any calculations to show totals.

² Each tenant is responsible for their own utilities; the trash pick up is included in the rent.

The valuation process is a systematic set of procedures an appraiser follows to provide answers to a client's questions about real property value.³ Generally, as appraiser studies a property from three different viewpoints, which is referred to as the approaches to value; (1) the cost approach(an estimation of the current cost of reproducing or replacing improvements , minus the loss in value from depreciation plus land or site value-usually reserved for new construction); (2) sales comparison approach (value indicated by recent sales of comparable properties in the market with paired data analysis to account for differences); and the (3) income capitalization approach (value is indicated by a property's earning power, based on the capitalization of income).⁴

Certain property lends itself in the valuation process to a specific or unique valuation process, for income producing property the cost approach would probably be ineffective because in this case the property is so old and while a good appraiser will evaluate property based on all three approaches all would not have to be used in the final analysis. In the case at hand, Mr. Watson used the sales comparison approach and the income capitalization approach in his analysis to come to his conclusion of market value of \$2,500,000.

The assessor contends that the property is assessed correctly and should be valued at the value previously assessed by the Davidson County Board of Equalization at \$7,061,500. In support of this contention of value the Assessor's Office used the sales comparison approach and the income capitalization approaches to sustain the value assessed by the Board.

In looking at the Mobile Home Study (collective exhibit #8 for the County) one sees that the County does rely on the NADA values in their assessment procedures. Despite the argument of Mr. Hahn, Mr. Lewis testified that since the State no longer issues a manual for mobile home values he feels the reliance on this resource appropriate and feels it adequately values the mobile homes. In looking at the County's exhibit #7 (property record card) the mobile homes are listed as yard items.

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, he has the burden of proof. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981)⁵

³ *The Appraisal of Real Estate*, 12th Ed., 2001, p. 49

⁴ *Id.*, @ p. 50

⁵ The standard here is "preponderance of the evidence". A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is

The administrative judge finds that January 1, 2006 constitutes the relevant assessment date pursuant to T. C. A. § 67-5-504(a). The administrative judge finds the fact subject property was appraised at a lower value in 2004 does not automatically establish that the 2006 appraisals are excessive as argued by the taxpayer's attorney.

Indeed, the administrative judge finds that the assessor supported his contentions of value with comparable sales and income analysis. Respectfully, the administrative judge finds that the 'prevailing factual conclusion was not based on the weight of the evidence'.⁶

In this case since we are dealing with a mobile home park, Tennessee Code Annotated (T.C.A.) §67-5-802 controls. It states in relevant parts:

(a) (2) Any such tax shall be collectible by the owner of the mobile park on a fiscal year basis, or in the alternative, the owner of the mobile park shall have the right to collect the tax by the month **on a pro rata share, together with any monthly rents due the owner.** (emphasis supplied)

(b) (2) It is the **duty** of each owner of land upon which a movable structure is located to list each such structure, its make, year, serial number, size, **original cost** and such other pertinent information as may be required by the division of property assessments, sign same and return it to the assessor of property on or before April 1 of each year. The assessor of property shall furnish to each owner of land used as a mobile home park a schedule of the assessed value of each moveable structure on or before July 1 of each year. (emphasis supplied)

The process is that the County Assessor sends to the land owner of mobile home parks a document called the 'mobile home report' that is filed out by land owner (in this case his designee the property manager) and returned to the County which then makes the assessment based on the information received. Taxpayer Boggs did not fulfill his obligation but now complains because the County Assessor used their own resources⁷ to arrive at the values. These values were then sent to the County which completed the assessment and made the determination and sent the value back to the land owner so that he could pay his property tax assessment.⁸ The land owner by statue (see above) is to then add the tax assessment to the rent on a pro rata basis so that the amount can be collected and paid, but the ultimate responsible for the tax, by statute, is that of the land owner.

The taxpayer in this cause failed to show that a reduction in the County's assessment is warranted.

the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue.

⁶ *NJC Deskbook on Evidence for Administrative Law Judges*, Christopher B. McNeil, General Editor, © 1993 & 2005

⁷ NADA book values

⁸ The mobile homes are to be taxed as improvements to the land on which they are located, and that makes the land liable for the taxes on the mobile home. 1995 WL399152 (Tenn. A.G.)

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,700,000	\$4,361,500	\$7,061,500	\$2,396,770

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

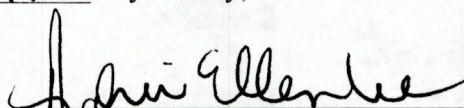
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED on this the 11th day of July, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. John Boggs
Barbara Perutelli, Esq.
Mr. Dean Lewis, Property Assessor's Office
Jo Ann North, Property Assessor